Sanjung Selamat Sdn Bhd v CL Chin & Associates & Ors (Part 3)

HIGH COURT (KUALA LUMPUR) — CIVIL NO D4-22-67-2005
ABDUL WAHAB PATAIL J
23 JANUARY 2006

Land Law — Restraint in dealings — Caveat — Removal of — Whether caveatable interest present — Whether it is a right based in personam — Whether can be converted to right in rem if the land is the sole asset of the plaintiff

The plaintiff was the registered owner of a land. On 24 May 2005, the fourth defendant entered a private caveat against the plaintiff's land. The fourth defendant's caveat was based on writ action in the Shah Alam High Court Civil Suit 22–808 of 2004 by the fourth defendant against four parties. The plaintiff's writ and statement of claim in this case was dated 14 January 2005 and was brought against the first and second defendants. On 27 May 2005, the plaintiff obtained judgment against the first defendant for breach of solicitor's undertaking and second defendant to remove second defendant's caveat on plaintiff's land. On 28 June 2005, the court of appeal dismissed the first and the second defendant's application. On 5 July 2005, the High Court also dismissed the first and the second defendant's application for stay. On 21 November 2005, the High Court allowed the plaintiff's application to add the third and the fourth defendants as parties and to amend the amended writ and amended statement of claim. On 6 December 2005, the fourth defendant entered appearance upon service of the re-amended writ and statement of claim. By the application at encl 95, the plaintiff sought an O 14 relief to remove the fourth defendant's private caveat lodged on a land. The issues raised were: (i) there was no cause of action against the fourth defendant; (ii) *res judicata*; (iii) abuse of process of the court. In respect of the first issue it was submitted, with reference to the pleadings that the averments that had been pleaded by the plaintiff could not be disposed off by way of affidavit evidence, and the plaintiff's case had to be made by way of a full trial.

Held, allowing plaintiff's application:

(1) The hearing on encl 95 was concerned with the application of O 14 to the re-amended writ in this case. The action in Shah Alam High Court by the fourth defendant is to remove the caveat by Goldmount Resources Sdn Bhd (second defendant in that action) on the plaintiff's land and to restrain the plaintiff from receiving monies from Goldmount Resources Sdn. Bhd. Since this court was concerned in this case only with the issue whether there was a caveatable interest, this court turned to that very issue (see paras 11–12).

(2) The orders sought in the Shah Alam suit against the plaintiff herein as first defendant in that case were for the plaintiff herein to provide account of any monies received from Goldmount Resources Sdn Bhd. Those claims against the plaintiff did not disclose any caveatable interest in the land, but a monetary claim against the plaintiff adequately covered by an order to account, and even perhaps augmented to keeping safe any monies received. An *in personam* interest that the plaintiff keeps its assets safe alone does not become a right in rem upon, and hence a caveatable interest in the land under the National Land Code even though the land was the sole asset of the plaintiff. It is plain the caveat upon the land is entered by the fourth defendant seeking to maintain a *status quo* on a claim not directly involving the land itself (see para 14).

(3) The Shah Alam High Court case involving the fourth defendant was dismissed on a preliminary objection that the deponent was not a director of the plaintiff Sanjung Selamat Sdn Bhd in that case, there was no *res judicata* or abuse of process by this action (see para 16).

(4) This court concluded the fourth defendant had failed to show there were any triable issues to require that the application for leave to enter summary judgment against the fourth defendant to be dismissed. The issues disclosed could be dealt by submissions on the affidavit evidence before the court. On the affidavit evidence before the court, the fourth defendant had failed to show it had any caveatable interest (see para 17).

[Bahasa Malaysia summary

Plaintif adalah pemilik berdaftar sebuah tanah. Pada 24 Mei 2005, defendan keempat memasukkan satu kaveat persendirian terhadap tanah plaintif. Kaveat defendan keempat adalah berdasarkan satu tindakan writ di Mahkamah Tinggi Shah Alam Guaman No 22–808 tahun 2004 oleh defendan keempat terhadap empat pihak. Writ dan pernyataan tuntutan plaintif dalam kes ini bertarikh 14 Januari 2005 dan adalah terhadap defendan pertama dan defendan kedua. Pada 27 Mei 2005, plaintif memperolehi penghakiman terhadap defendan pertama atas perlanggaran akujanji peguamcara dan terhadap defendan kedua untuk membatalkan kaveat persendirian defendan kedua ke atas tanah plaintif. Pada 28 Jun 2005, Mahkamah Rayuan menolak permohonan defendan pertama dan kedua. Pada 5 Julai 2005, Mahkamah Tinggi juga menolak permohonan untuk penggantungan. Pada 21 November 2005, Mahkamah Tinggi membenarkan permohonan plaintif untuk menambahkan defendan ketiga dan keempat sebagai pihak-pihak dan meminda writ pindaan serta pernyataan tuntutan. Pada 6 Disember 2005, defendan keempat memasukkan kehadiran setelah disampaikan writ yang dipinda sekali lagi dan pernyataan tuntutan. Melalui permohonan di lampiran 95, plaintif menuntut relif A 14 untuk membatalkan kaveat persendirian defendan keempat yang didaftarkan atas tanah tersebut. Isu yang dibangkitkan ialah: (i) tiada kausa tindakan terhadap defendan keempat; (ii) *res judicata*; (iii) penyalahgunaan proses mahkamah. Berhubungan dengan isu pertama ia dihujahkan, merujuk kepada pliding-pliding

dan pengataan-pengataan yang diplidkan oleh plaintif, ia tidak boleh diselesaikan melalui keterangan afidavit, dan kes plaintif harus dibicarakan di perbicaraan penuh.

Diputuskan, membenarkan permohonan plaintif:

(1) Pendengaran lampiran 95 berhubung dengan permohonan A 14 untuk meminda sekali lagi writ dalam kes ini. Tindakan di mahkamah tinggi Shah Alam oleh defendan keempat adalah untuk membatalkan kaveat oleh Goldmount Resources Sdn Bhd (defendan kedua dalam tindakan tersebut) atas hartanah plaintif dan menyekat plaintif daripada menerima wang daripada Goldmount Resources Sdn. Bhd. Oleh kerana mahkamah ini hanya mengutamakan kes ini dengan isu samada terdapat apa-apa kepentingan kaveat, mahkamah ini akan memutuskan berdasarkan isu tersebut sahaja (lihat perenggan 11–12).

(2) Perintah-perintah yang dituntut dalam tindakan Shah Alam terhadap plaintif di sini sebagai defendan pertama dalam kes Shah Alam adalah untuk plaintif di sini menjelaskan akaun apa-apa wang yang diterima daripada Goldmount Resources Sdn Bhd. Tuntutan tersebut terhadap plaintif tidak mendedahkan sebarang kepentingan kaveat di tanah tersebut, tetapi satu tuntutan wang terhadap plaintif yang dapat diselesaikan melalui satu perintah untuk penjelasan, dan kemungkinan menyimpan sebarang wang yang diterima dengan selamatnya. Satu kepentingan *in personam* bahawa plaintif menyimpan asetnya dalam keadaan yang selamat dengan sendirinya tidak menjadikannya satu hak *in rem* dan dengan itu memberikan kepentingan kaveat atas tanah tersebut di bawah Kanun Tanah Negara walaupun tanah tersebut merupakan aset tunggal plaintif. Adalah jelas bahawa kaveat atas tanah tersebut yang dimasuki oleh defendan keempat untuk mengekalkan *status quo* satu tuntutan tidak melibatkan tanah tersebut (lihat perenggan 14).

(3) Kes Mahkamah Tinggi Shah Alam yang melibatkan defendan keempat telah ditolak atas bantahan awal bahawa deponen tersebut bukannya pengarah plaintif Sanjung Selamat Sdn Bhd dalam kes tersebut, maka tiada *res judicata* atau penyalahgunaan proses mahkamah dalam tindakan ini (lihat perenggan 16).

(4) Mahkamah menyimpulkan bahawa defendan keempat gagal menunjukkan terdapat sebarang isu yang harus dibicarakan yang dapat menyebabkan permohonan untuk kebenaran memasuki penghakiman terus terhadap defendan keempat ditolak. Isu yang didedahkan dapat diputuskan melalui penghujahan dan berdasarkan bukti afidavit sebelum mahkamah. Berdasarkan bukti afidavit sebelum mahkamah ini, defendan keempat gagal menunjukkan ia mempunyai sebarang kepentingan kaveat (lihat perenggan 17).]

Notes

For cases on caveats, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 3480–3824.

Cases referred to
Eng Mee Yong v Letchumanan [1979] 2 MLJ 212 (refd)

Legislation referred to
National Land Code 1965

David Hoh (Lim & Hoh) for the plaintiff.
K Gomes (Sabarudin Othman & Ho) for the fourth defendant.

Abdul Wahab Patail J:

GROUNDS OF JUDGMENT (ENCL 95)

[1] By the application at encl 95, the plaintiff seeks an O 14 relief namely:

(a) Kaveat persendirian di bawah perserahan No 19264/2005 bertarikh 24 Mei 2005 (Kaveat Elmore tersebut) yang dimasukkan oleh defendan keempat ke atas tanah yang dipegang di bawah HS(D) 112761, PT No 1429 Mukim Damansara, Daerah Petaling, Negeri Selangor (tanah tersebut) dibatalkan oleh Pendaftar Hakmilik/Pentadbir Tanah Selangor serta merta;

(b) Defendan keempat membayar pampasan kepada plaintif yang akan ditaksirkan dihadapan Timbalan Pendaftar Mahkamah Tinggi, Kuala Lumpur;

(c) Pendaftar Hakmilik/Pentadbir Tanah Negeri Selangor tidak akan membenarkan penyerahan dan/atau pendaftaran apa-apa kaveat dan/atau bebanan ke atas tanah tersebut (dan jika ada akan menolaknya dengan serta merta) kecuali diperintahkan sebaliknya oleh mahkamah ini dan/atau perintah muktamad kes ini;

(d) Kos

[2] The orders are sought against the fourth defendant Elmore Corporation Sdn Bhd. In the hearing on 19 January 2006, the plaintiff withdrew prayer (c) of enclosure 95. Prayer (c) was therefore struck out.

[3] The issues raised are:

(i) no cause of action against the forth defendant;

(ii) *res judicata*;

(iii) abuse of process of the court.

BACKGROUND

[4] The plaintiff is the registered owner of land held under HS(D) 112761, PT No 1429 Daerah Petaling, Mukim Damansara, Selangor. On 24 May 2005, Elmore Corporation Sdn Bhd (the fourth defendant) entered a private caveat (19264/2005) against the plaintiff's land. The fourth defendant's caveat application in Form 19B is dated 20 May 2005. The fourth defendant's statutory declaration by Lee Yoke Eng is also dated 20 May 2005. According to the Form 19B, the fourth

A defendant's caveat is based on writ action in the Shah Alam High Court Civil Suit 22-808-2004 by the fourth defendant (fourth defendant's writ action) against four parties namely, Sanjung Selamat Sdn Bhd, Goldmount Resources Sdn Bhd, Mohd Azhar bin Haron and Langgeswary a/p Chinnapa @ Ramasamy.

B **[5]** The plaintiffs writ and statement of claim in this case is dated 14 January 2005 and is brought against the first and second defendants. On 27 May 2005, the plaintiff obtained judgment against the first defendant for breach of solicitor's undertaking and second defendant to remove second defendant's caveat on plaintiff's land. On 28 June 2005, the Court of Appeal dismissed the first and the second defendant's application. On 5 July 2005, the High Court also dismissed the first and the second C defendant's application for stay. On 21 November 2005, the High Court allowed plaintiff's application to add the third and the fourth defendants as parties and to amend the amended writ and amended statement of claim. On 6 December 2005, the fourth defendant entered appearance upon service of the re-amended writ and statement of claim.

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[6] Since the plaintiff is the registered owner of the land, it is for the caveator to prove that he has a caveatable interest: *Eng Mee Yong v Letchumanan* [1979] 2 MLJ 212 (PC).

E **[7]** In respect of the first issue it was submitted, with reference to the pleadings that the averments that have been pleaded by the plaintiff cannot be disposed off by way of affidavit evidence, and the plaintiffs case has to be made by way of a full trial:

> The plaintiff has got to come and show how complete strangers ie the second defendant is linked to the third and forth defendant. He has to show how the third defendant directly F or indirectly controls the running of the second and forth defendants. The allegations that have been raised are one of fraud and conspiracy albeit they have not been specifically pleaded.

[8] The submission then continued:

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> Therefore as the facts of the matter stand, the forth defendant is still the controlling major shareholder of the plaintiff. The forth defendant owned ail the shares in the plaintiff company. This has given him the absolute right to maintain a suit against the plaintiff and pursuant to that suit he filed a caveat.

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> Since the suit against the plaintiff by the forth defendant in the Shah Alam High Court Writ Summons No MT3–22–808 of 2004 is still maintainable, there is no question of the plaintiff's entitlement to the remedy of the O 14 judgment as prayed for in their application.

I **[9]** The submissions above have nothing to do with there being no cause of action disclosed on the pleadings.

[10] In respect of the second issue it was submitted:

> The forth defendant will contend that the plaintiff's application is legally flawed and cannot be sustained as the very issues raised by the plaintiff has already been raised by the plaintiff in the Shah Alam High Court Originating Summons No MT3–22–808 of 2004 where the Shah Alam High Court had dismissed with costs the plaintiff's said application.
>
> The plaintiff has not filed any further action to re-hear the originating summons but has chosen to appeal against the said decision. We will submit that the plaintiff is therefore precluded by the doctrine of *res judicata* from raising the same issues in support of this application.

[11] The hearing on encl 95 is concerned with the application of O 14 to the re-amended writ in this case. The action in Shah Alam High Court No MT3–22–808 of 2004 by the fourth defendant is to remove the caveat by Goldmount Resources Sdn Bhd on the plaintiff's land and to restrain the plaintiff from receiving monies from Goldmount Resources Sdn Bhd.

[12] Agreeing with the fourth defendant that this court is concerned in this case only with the issue whether the Form 19B discloses a caveatable interest,this court turns to that very issue.

[13] The grounds set out in the Form 19B by the fourth defendant dated 20 May 2005 are as follows:

(i) bahawa kami telahpun menjalankan satu tindakan sivil terhadap Sanjung Selamat Sdn Bhd (No Pendaftaran Syarikat 417483-V) (selepas ini dikenali syarikat tersebut) di Mahkamah Tinggi Malaya di Shah Alam melalui Writ Saman No MT3–22–808 tahun 2004. Bahawa sesalinan writ saman dan pernyataan tuntutan tindakan tersebut kini dilampirkan di sini dan ditandakan sebagai eksh 'A'.

(ii) bahawa syarikat itu hanya mempunyai hartanah tersebut sebagai asetnya sahaja.

(iii) berhubungan itu, kami khuatir pemilik berdaftar ini akan melupuskan hartanah tersebut kepada pihak ketiga yang mungkin akan memperolehi kepentingan terhadap hartanah yang dinyatakan.

(iv) surat akuan dilampirkan.

[14] Taking into consideration the orders sought are principally against Goldmount Resources Sdn Bhd, the orders sought against the plaintiff herein as first defendant in that case are for Sanjung Selamat Sdn Bhd to provide account of any monies received from Goldmount Resources Sdn Bhd, payments to other parties from such monies, to prevent Sanjung Selamat from receiving any monies from Goldmount Resources Sdn Bhd and vice versa, or to use any monies in its accounts. Those claims against the plaintiff do not disclose any caveatable interest in the land, but a monetary claim against the plaintiff adequately covered by an order to account, and even perhaps augmented to keeping safe any monies received. An *in personam* interest that the plaintiff keeps its assets safe alone does not become a right *in rem*

upon, and hence a caveatable interest in the land under the National Land Code 1965 even though the land is the sole asset of the plaintiff. It is plain the caveat upon the land is entered by the fourth defendant seeking to maintain a *status quo* on a claim not directly involving the land itself. Its claim appear to be based upon a disputed transaction upon the shares of the plaintiff company. This distinction must be maintained in this case particularly in the light of the indisputed fact that third party purchasers whose rights are affected by the caveat upon the land, and there being no allegation or evidence that these third party purchasers are anything other than bona fide purchasers for value.

[15] In respect of the third ground, it was submitted:

> The plaintiff having failed in their application before the Shah Alam High Court and having filed an appeal against the decision of the Shah Alam High Court and while the said appeal is pending is clearly abusing the process of the court by making a similar application before this Honourable Court.

[16] The Shah Alam High Court case involving the fourth defendant is Shah Alam High Court Originating Summons 24–1085 of 2005. Accepting that the application was dismissed on a preliminary objection that the deponent Ong Hee Yong was not a director of the plaintiff Sanjung Selamat Sdn Bhd in that case, there is no *res judicata* or abuse of process by this action.

[17] This court concludes the fourth defendant has failed to show there are any triable issues to require that the application for leave to enter summary judgment against the fourth defendant must be dismissed. The issues disclosed can be dealt by submissions on the affidavit evidence before the court. On the affidavit evidence before the court the fourth defendant has failed to show it has any caveatable interest.

[18] Judgment was entered for the plaintiff in accordance with prayers (a), (b) and (d) of the summons in chambers at encl 95.

Application allowed.

Reported by Sally Kee